IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO. 17 OF 1996
IN
TESTAMENTARY PETITION NO. 132 OF 1996

Ila Pandya ..Petitioner/Plaintiff.

Vs.

Smita Patel ..Caveatrix/ Defendant.

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Mr. S.H Doctor, Senior Advocate with Mr. J.P. Sen with Mr. Ivov D'Cruz withMs. Sheetal Shah i/b Mehta & Girdharilal for the Petitioner.
Ms. Smita Patel – Caveatrix in person.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

8th June, 2007.

P.C. :

1. The Testamentary Petition before the Court has been instituted by Ila Bipin Pandya praying for the grant of letters of administration for the estate of the deceased Bipin Dalsukhram Pandya who died intestate on 4th November, 1995. The Caveatrix filed a caveat before this Court on 7th March, 1996 opposing the grant upon which the Testamentary Petition was converted into a Testamentary Suit, No.17 of 1996. A Chamber Summons taken out

by the Petitioner seeking the dismissal of the Caveat was dismissed on 23rd December, 1996 by a Learned Single Judge. An appeal filed before the Division Bench and a Special Leave Petition were dismissed on 4th March, 1997 and 28th April, 1997. The Caveatrix had thereupon instituted a suit before this Court claiming that she was a creditor of the estate of the deceased in the amount approximately of Rs.1.84 Crores which amount should be disbursed to her. The Petitioner had taken out a Notice of Motion seeking leave to deposit an amount of Rs.1.20 Crores upon which a direction was inter alia sought to discharge the Caveat filed by the Defendant with a direction for the issuance of letters of administration to the Petitioner in respect of the estate of the deceased. The Motion was dismissed by a Learned Single Judge of this Court and the order of the Learned Single Judge was confirmed in appeal by the Division Bench.

2. A Special Leave Petition was filed before the Supreme Court by the Petitioner herein. The Special Leave Petition was admitted and by a judgment and order dated 17th May, 2007 the Civil Appeal was allowed by the Supreme Court. The operative directions

issued by the Supreme Court are in the following terms :

> "In this view of the matter we allow this appeal and set aside the order dated 29th July, 2004 of the learned Single Judge and 25th August, 2004 of the Division Bench and allow the notice of motion and direct that the appellant shall, within a period of three months from today, deposit a sum of Rs.2,40,00,000/- in all with the prothonotary of the Bombay High Court (and after deduction of the costs) the balance to be disbursed to the respondent in full discharge of her claim as a Caveatrix in the testamentary suit and as a plaintiff in Civil Suit No.4892 of 1998, and that no application of whatever nature in respect of these two matters will hereinafter be entertained by any Court. We are also of the opinion that as a consequence of the above direction and in the interest of justice the respondent's interest as a caveatrix shall stand discharged and the Civil Suit filed by her shall also be deemed to be disposed of.
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> We also impose costs of Rs. Five lakhs to be recovered from the sum awarded as above. The amount representing the costs will be donated to a charity to be identified by the Chief Justice of the Bombay High Court."

3. The Supreme Court has held that while the Chamber Summons taken out by the Petitioner for the dismissal of the Caveat had been rejected, that order having been confirmed in appeal, the Caveatrix - Respondent had only claimed the interest of a creditor in the estate of the deceased. Consequently it could not be held that she had a caveatable interest which continued to survive. The

Supreme Court observed that while the Caveatrix had referred to a will allegedly executed by the deceased, she had not produced the will since the date of the institution of the Suit in 1996, though the suit itself was at the stage of recording of evidence. On the contrary the siblings of the deceased had furnished affidavits identifying the Petitioner as his widow and legal heir and deposing that they had no objection to the letters of administration being granted to her. In this background the Supreme Court observed as follows :

> "We are thus unable to comprehend or fathom the right that the respondent still claims in the estate of the deceased so as to maintain her status as a caveatrix."

The Supreme Court has also extensively dealt with the conduct of the caveatrix both in the proceedings before several Judges of this Court and before the Supreme Court where the Civil Appeal was argued.

4. The judgment and order of the Supreme Court dated 17th May, 2007 set aside the orders passed by the learned Single Judge and by the Division Bench of this Court on 29th July, 2004 and 25th August, 2004 respectively. The Supreme Court allowed the Notice of

Motion taken out by the Petitioner. It needs emphasis that prayer clause (a-i) of the Notice of Motion before this Court (Notice of Motion 1207 of 2004) specifically sought a direction that on the deposit of an amount of Rs.1.20 Crores or such other amount, as may be directed to be deposited, “this Honourable Court may be pleased to discharge the caveat filed by the Defendant and direct to issue Letters of Administration to the plaintiff in respect of the estate of the deceased Vipin Dalsukhram Pandya”. In terms of the directions issued by the Supreme Court the Petitioner has deposited an amount of Rs.2.40 Crores with the Prothonotary and Senior Master and a copy of the receipt dated 1st June, 2007 issued to the Petitioner's advocate is placed on the record. The judgment of the Supreme Court directs that upon the deduction of costs quantified at Rs.5 lacs the balance is to be disbursed to the caveatrix in full discharge of her claim as a caveatrix in the Testamentary Suit as well as in Civil Suit 92 of 1998 and that no application of whatsoever nature in respect of these two cases will hereinafter be entertained by any Court. The Supreme Court has specifically directed that the interest of the Respondent as a caveatrix shall stand discharged and the Civil Suit shall also be

deemed to be disposed of.

5. The Respondent has during the course of her submissions urged before the Court that she will be filing an application before the Supreme Court for "recall of the order". However, the judgment and order dated 17th May, 2007 has brought finality to the proceedings and the directions issued by the Supreme Court are express and categorical. Having regard to the judgment of the Supreme Court it is now only appropriate and proper that the Testamentary Petition be disposed of by directing the Registrar to issue Letters of Administration to the Petitioner in accordance with law. There shall be an order accordingly in these terms. The Testamentary Petition is accordingly disposed of.